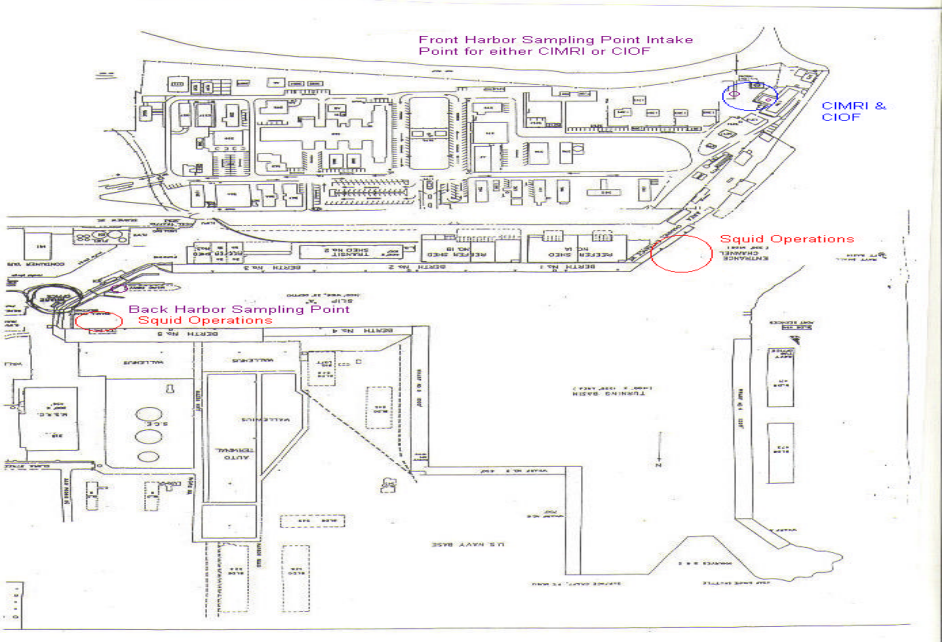
California Regional Water Quality Control Board, Los Angeles Region
427th Regular Meeting (Pasadena)
January 26, 2000
Enforcement Agenda Item No. 12
Staff Report for Administrative Civil Liability Complaint No. 99-122
For Sun Coast Calamari

Introduction

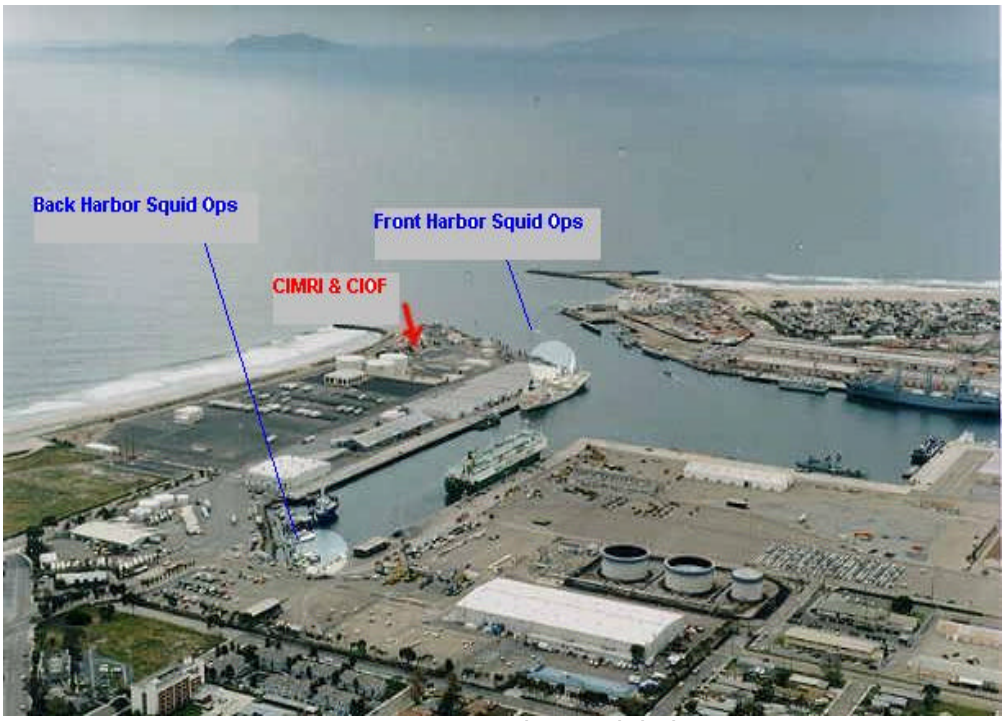
On December 2, 1999, and on four other documented occasions, Sun Coast Calamari discharged waste, in violation of the Porter-Cologne Water Quality Control Act, into Port Hueneme Harbor, California (Ventura County). Regional Board staff have prepared Administrative Civil Liability Complaint No. 99-122 to address these violations.

Background

Port Hueneme Harbor is located in Ventura County, between the cities of Oxnard and Ventura. It is a naval and industrial-based harbor. "The Port of Hueneme is the only deep water harbor between Los Angeles and the San Francisco Bay area and is the U.S. Port of Entry for California's Central Coast region. It serves international businesses and ocean carriers from both the Pacific Rim and Europe. The Port of Hueneme ranks among the top seaports in California for general cargo throughput. The niche markets that Hueneme serves include: the import and export of automobiles, fresh fruit, fresh produce, and forest products. The Port of Hueneme is the top seaport in the United States for citrus export and ranks among the top ten ports in the country for automobile and banana imports" (from www.portofhueneme.org).



Port Hueneme Harbor map



Port Hueneme Harbor aerial photo

October 27, 1999
Regional Board staff were notified by Channel Islands Ocean Farms (CIOF) that they were in violation of their National Pollutant Discharge Elimination System (NPDES) permit (NPDES NO. CA0063070, Order No. 92-082, CI No. 7219) for ammonia, dissolved oxygen, and biological oxygen demand. They stated that the violations were caused by the intake water from the harbor exceeding the discharge limits causing a toxic effect to their marine organisms. CIOF is an aquaculture business located within Port Hueneme Harbor which cultures abalone. They circulate saltwater from the harbor through their tanks and the saltwater is discharged back into the harbor.

Channel Islands Marine Resources Institute (CIMRI) is a non-profit organization which is also located within Port Hueneme Harbor. CIMRI provides education to local schools and the community on marine life and effects of pollution. CIMRI operates much the same as CIOF and was also in violation of their permit (NPDES No. CA0064131, Order No. 97-137, CI No. 7854) during the same time period. The organisms in CIMRI's tanks had to be relocated to another facility because of the deleterious effects of the harbor water's toxicity. CIMRI has ceased operating, resulting in no incoming funds to run their programs.

These two facilities are required to monitor for certain pollutants as a condition of their NPDES permits. Water chemistry results indicated very low levels of dissolved oxygen in the water which would essentially cause aquatic organisms to suffocate. Further data indicated high ammonia levels. Ammonia can potentially be extremely toxic to aquatic organisms.

The squid-fishing season, which began in the beginning of October, was producing bountiful harvests, and the offloading operations in the harbor seemed to be a potential explanation of our water quality test results. When squid die, they release their ink and ammonia. The biological components of squid ink are such that when it decomposes, it requires a large amount of oxygen in the process. This could be the source of the oxygen depletion seen in the

water chemistry analyses. Further, the addition of ammonia into the harbor had the potential to be toxic to the animals in the facilities and within the harbor as the concentration increased.

October 28, 1999

Regional Board staff investigated the complaint received from CIOF and collected water samples from the harbor for analysis. Initial dissolved oxygen (DO) levels taken in the field were recorded at 3 mg/L near CIMRI and CIOF and at 0.3 mg/L near the boats where squid offloading was occurring. Dissolved oxygen levels should be around 7 mg/L. Ammonia levels ranged from 2 to 5 mg/L from the facilities to the boats. Ammonia levels have to be less than 0.1 mg/L before CIMRI can bring their organisms back. Samples were collected and taken to the California State Department of Health Services laboratory in Los Angeles for analysis. Sample 1 was collected from harbor water in the back basin near a squid boat offloading its catch. Sample 2 was collected across the harbor from a drain on the dock where wastewater was flowing into the harbor. The following results were reported (all are in mg/L):

Source	Sample 1	Sample 2	Limit
Nitrate nitrogen	0.40	1.80	0.20
Ammonia nitrogen	22.8	4.40	0.05
Nitrite nitrogen	< reportable limit	0.04	0.03
Organic nitrogen	55.7	15.2	0.05
BOD – 5 day	> 500	104	2.00

Nine out of the ten analyses exceeded established limits.

Thick foam was observed in the water near the boats and offloading operations. The water was dark purple-black in color.

Regional Board staff observed very sloppy housekeeping practices in the harbor as well as on the dock. The squid boats have tanks where the squid are kept after they are caught. When the squid die, ammonia and ink become concentrated in these tanks. The water in the tanks is discharged before the squid are offloaded to minimize the volume of unnecessary water which must be handled when they offload the squid. This water was being discharged into the harbor as the boats entered and left, as well as at dockside. Squid and water spilled during the offloading operation was being rinsed off the dock into the harbor.

November 1, 1999

A meeting was held on November 1, 1999, with representatives of the Regional Board, the Department of Fish and Game, port officials, the squid fishing companies, CIMRI and CIOF, and the Santa Barbara Channel Keeper.

Foam in the water on October 28, 1999.

Squid on the docks on October 28, 1999.

The meeting was called to address the seriousness and immediacy of the problem of toxicity in the harbor and to consider potential solutions. The representatives from the squid seafood companies agreed that the problems were most likely the result of their activities in the harbor. After discussing the role of the Regional Board in protecting water quality and outlining the violations of the Porter-Cologne Water Quality Control Act and the Water Quality Control Plan for the Los Angeles Region (also known as the Basin Plan) that were occurring, several options to correct the problem were discussed. The decision was made to implement several Best Management Practices (BMPs) that would alter the method of squid offloading and processing to decrease the amount of wastewater and biological material that was being flushed into the harbor. The squid companies agreed to implement these BMPs and CIMRI agreed to continue monitoring the water quality of the harbor to determine whether these changes would abate the pollution and improve water quality in the harbor.

The extent these BMPs were implemented is unknown. However, water chemistry data indicated the quality of the water was not improving. Graphic analysis of the data showed that the water quality deteriorated during the week and improved over the weekends when squid fishing did not occur. Continued complaints were made to the Regional Board about the squid companies' non-compliance with implementation of the agreed-upon BMPs and their continued discharge of waste into the harbor.

On November 24, 1999, the Executive Officer of this Regional Board issued Notice of Violation letters to the five squid companies operating in Port Hueneme Harbor. The companies were directed to cease discharging into the harbor immediately, and that any further discharges would be subject to enforcement action by the Regional Board, including a possibility of administrative civil liability of up to $5,000 for each day of violation. Some possible options were listed for the companies to pursue as alternatives to discharging into the harbor. These alternatives included applying for a NPDES permit through the Regional Board, submitting a new list of BMPs that could be implemented to successfully abate the pollution in the harbor, obtaining an industrial user permit to allow the squid waste to be discharged to the sanitary sewer system, or discharging the waste water from the holding tanks prior to entering waters of the State.

November 25-28, 1999

During the four day Thanksgiving holiday, when there was no fishing and very high tides flushed the harbor, there was a noticeable improvement in the water quality in the harbor. However, once fishing operations resumed, the water quality decreased rapidly again.

December 3, 1999
Regional Board staff inspected the squid offloading operations in Port Hueneme to determine whether the squid companies were complying with the Notice of Violation letters and had ceased discharge to the harbor. Extreme high wind conditions had resulted in a small craft warning being issued by the Wharfinger's office.

There were only two companies in operation during the inspection. It was obvious by the tanks hooked up to their operations that they had implemented some of the suggested BMPs. These tanks had been loaned to them by CIOF. There was no foam in the water around these ongoing operations and spillage onto the dock was minimal. The high winds were mixing the water a little and the minimal squid operations explain our field measurements of DO in the front of the harbor being 7.4 and 7.3 mg/L which are within Basin Plan standards. In the back basin of the harbor, the DO concentration was recorded at 5.4 mg/L.

Personnel from the Wharfinger's Office and indicated that Sun Coast Calamari had been unloading squid between 0100 and 0500 hours and a thick layer of foam had been observed around their boat and their offloading operations. Sun Coast Calamari received their Notice of Violation letter, sent by registered mail, on November 30, 1999. Regional Board staff also observed Sun Coast Calamari personnel hosing off the dock and offloading equipment. The wastewater then drained directly into the harbor.

Sun Coast Calamari personnel hosing off equipment and dock on December 3, 1999.

Sun Coast Calamari truck on December 3, 1999.

Sun Coast Calamari Tanker and personnel hosing down the dock on December 3, 1999.

December 9, 1999

Regional Board staff again inspected the squid offloading operations at Port Hueneme Harbor on December 9, 1999. While observing dock offloading operations at Sun Coast Calamari, staff observed a large quantity of foam in the water around the vessel, *Nicholas Michael*, which is contracted to them. The pipes and hoses of their offloading equipment were leaking significant amounts of water, which was draining into the harbor, the most likely cause of the foam. There was a large overflow of water and squid from the conveyor belts and discharging foam and squid all over the dock. DO levels next to the boat were 5.75 mg/L and ammonia levels were 0.6 – 0.8 mg/L.

Foam in the water around *Nicholas Michael* on December 9, 1999.

Spilt squid on the docks on December 9, 1999.

Water and foam being spilled from Sun Coast Calamari offloading operations on December 9, 1999.

Sun Coast Calamari truck on December 9, 1999.

Another boat contracted with Sun Coast Calamari, *Junior*, was observed right outside of the harbor dumping water. This does not meet the requirement of three miles outside of the harbor to release the hold water into waters of the United States.

Boats discharging within the 3 mile limit on December 9, 1999.

A close up of the *Junior*, contracted with Sun Coast Calamari, discharging water on December 9, 1999.

Impacts to Water Quality

These poor housekeeping practices have created a pollution nuisance in Port Hueneme Harbor. A bait company, which supplied baitfish to fishing boats, cannot keep their baitfish alive in their pens. CIMRI cannot maintain its marine organisms in their tanks. These organisms continue to be housed offsite at additional cost to CIMRI. The increased levels of ammonia in the harbor are toxic to the marine life. The depressed levels of dissolved oxygen suffocate those organisms that are not sensitive to the high ammonia levels. The combined effect is that the harbor is uninhabitable for many marine organisms usually found here. The Basin Plan states that DO levels should be 7.0 mg/L on the average, with no reading under 5.0 mg/L. Ammonia standards are dependent on the species of the organism, and the temperature and pH of the water. For CIMRI to bring their animals back and be operational again, the ammonia levels need be below 0.1 mg/L. Water quality samples taken by CIMRI were collected at two different locations twice a day. The first location was the intake for their water. This represents the front of the harbor and a best case scenario. The second sampling point was in the back of the harbor behind a boat named the *California Responder*. This sample would represent the worst case scenario since this water is not mixed as much and the water is subject to longer detention times which increases the amount of time necessary for its recovery. Below are the minimum and maximum values as well as the average values for dissolved oxygen and ammonia measured during November and December, 1999, by CIMRI.

Dissolved Oxygen	**November**	**December**
Front Harbor		
Average	6.21 mg/L	5.96 mg/L
Minimum	3.56 mg/L	4.39 mg/L
Maximum	8.00 mg/L	7.53 mg/L
Back Harbor		
Average	4.73 mg/L	5.05 mg/L
Minimum	2.59 mg/L	3.13 mg/L
Maximum	6.85 mg/L	6.80 mg/L

Ammonia	**November**	**December**
Front Harbor		
Average	1.12 mg/L	0.24 mg/L
Minimum	0.00 mg/L	0.00 mg/L
Maximum	4.00 mg/L	0.80 mg/L
Back Harbor		
Average	1.25 mg/L	0.38 mg/L
Minimum	0.20 mg/L	0.00 mg/L
Maximum	4.00 mg/L	0.80 mg/L

On December 31, 1999 Regional Board staff received a phone call from CIOF. A diver had been in the harbor and noticed all the red and coraline algae was bleached and dying as if it had been burned. High ammonia levels are one of the suspected causes.

Alleged Violations

Sun Coast Calamari is alleged to have violated Sections 13260, 13264, and 13376 of the California Water Code, in addition to both the Basin Plan and the California Ocean Plan, by discharging squid holding tank water high in Biological Oxygen Demand substances and ammonia and squid wastes into Port Hueneme Harbor. The California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board), as a legal authority may impose civil liability under Sections 13265 and 13385 of the California Water Code (CWC). For reference, relevant portions of Sections 13260, 13264 and 13376 of the CWC are stated below:

California Water Code Section 1*3260*.

(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(b) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

California Water Code Section 13264. Prerequisites to discharge.

(a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, ….prior to the filing of the report required by Section 13260.

California Water Code Section13376. Reports of discharges

Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state…..shall file a report of the discharge in compliance with the procedures set forth in Section 13260……. The discharge of pollutants …or fill material… by any person except as authorized by waste discharge requirements is prohibited…

The Water Quality Control Plan for the Los Angeles Region (Basin Plan) adopted by the Regional Water Quality Control Board, Los Angeles Region on June 13, 1994, includes water quality objectives regulating ammonia and dissolved oxygen levels. The water quality

objectives for dissolved oxygen are: “At a minimum, the mean annual dissolved oxygen concentration of all waters shall be greater than 7 mg/L, and no single determination shall be less than 5.0 mg/L, except when natural conditions cause lesser concentrations”. The water quality objectives for ammonia are based on pH and temperature, but are normally toxic to aquatic organisms in the harbor at levels greater than 2 mg/L..

The California Ocean Plan adopted by the State Water Resources Control Board on July 23, 1997 includes general requirements for the management of waste discharges to the ocean. It states: “Waste management systems that discharge to the ocean must be designed and operated in a manner that will maintain the indigenous marine life and a healthy and diverse marine community.”, and “Waste discharged to the ocean must be essentially free of: Material that is floatable or will become floatable upon discharge. … Substances which will accumulate to toxic levels in marine waters, sediments, or biota.”

Proposed Civil Liability

Sun Coast Calamari is civilly liable for $19,900 in accordance with Section 13265 of the CWC. For reference, the relevant portion of Section 13265 of the CWC is listed below:

California Water Code Section 13265. *Civil Liability*

(a) Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 143323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

Penalty Calculations

Regional Board staff or other agencies observed Sun Coast Calamari violating the CWC on at least five separate occasions. This discharge of wastes to a navigable water of the United States is contrary to the CWC, the California Ocean Plan, and the Los Angeles Basin Plan. Therefore, under section 13265 (d) (1) of the CWC, the maximum civil liability that could be imposed for these violations is $5,000 each day for 5 days, for a total of $25,000.

Pursuant to section 13385 (e) of the SWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

A. Nature, circumstances, extent, and gravity of the violations – The discharge of pollutants including ammonia and biological oxygen demand-laden materials to the harbor created a nuisance and was the source of pollution of the harbor. The increased levels of ammonia were toxic to aquatic organisms. Further, low dissolved oxygen will suffocate aquatic organisms. CIMRI was forced to relocate their aquatic organisms to another facility because they were unable to survive in this poor quality water. Therefore, a reduction of the maximum civil liability is not warranted.

B. The ability of the discharger to pay – The ability of the discharger to pay is unknown. However, the proposed civil liability assessment is not a significant amount compared to the ultimate value of changes if they had been made and the discharger came into compliance. Therefore, a reduction of the maximum civil liability is not warranted.

C. Prior history of violations – Regional Board staff is not aware of any previous violations. Therefore, a reduction of the maximum civil liability is warranted.

D. Degree of culpability - Sun Coast Calamari willfully allowed wastes from the squid offloading operations to be discharged into Port Hueneme Harbor. Sun Coast Calamari failed to take adequate measures to prevent the discharge of pollutants. The chilled seawater is not being discharged outside the waters of the United States nor is it being recycled in a holding tank during the offloading process. These options were discussed and agreed upon at the meeting held on November 1, 1999. Sun Coast Calamari was informed of, and understood, the impacts of their actions when they chose not to comply. Therefore, a reduction of the maximum civil liability is not warranted.

E. Economic benefit or savings - Sun Coast Calamari has realized an economic benefit by not having to pay for the refitting of the offloading area, or the changes in offloading procedures. This saving ranges anywhere from $5,000 to $15,000. Implementation of the suggested BMPs would not constitute a significant cost. Three of the other companies who offload squid were able to make these changes without expending large amounts of money. Further, CIOF offered the use of their large storage tanks to hold the wastewater during offloading so it could be recycled back onto the boat for discharge more than three miles outside the harbor. These tanks are valued between $3,500 and $4,800 in their used condition. Monterey Fish Company estimated the total cost of the modifications to their operations to meet compliance was $5,000. Therefore, a reduction of the maximum civil liability is not warranted.

F. Other matters as justice may require - Other matters to consider include time spent by the staff of the Regional Board in evaluating the violations and preparing this Order and related documents. The Regional Board charges a rate of $70 per hour for recovery of staff costs. Regional Board staff time is conservatively estimated at 70 hours, staff costs incurred by the Regional Board total $4,900.

After consideration of the factors listed in Section 13327 and Section 13385(e) of the CWC, the Regional Board Executive Officer recommends that civil liability be imposed by the Regional Board in the amount of $19,900. This includes $15,000 as an assessment for the violations and $4,900 for staff costs.

Options

1. Adopt a directive supporting the attached Complaint No. 99-122 for Administrative Civil Liability in the amount of $19,900.
2. Modify Complaint No. 99-122 for Administrative Civil Liability.
3. Rescind Complaint No. 99-122 for Administrative Civil Liability.

Conclusion

1. Sun Coast Calamari was given a reasonable amount of time to come into compliance with the Notice of Violation dated November 24, 1999.

2. Other squid processing companies were able to come into compliance with the Notice of Violation in a reasonable amount of time and with a reasonable expenditure.
3. The penalty of $19,900 is more than fair with regard to the repeated violations.
4. It is important for the Board to sustain its position that compliance with the California Water Code, the California Ocean Plan, and the Basin Plan will be enforced.

Recommendation

Affirm the attached Complaint No. 99-122 for Administrative Civil Liability in the amount of $19,900, which includes $15,000 as an assessment for the violations and $4,900 for staff costs. Please note that the statutory maximum the Regional Board could assess is $29,900.